IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 14 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF INCOME-TAX

Versus

D C GANDHI ASSOCIATES

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Appearance:

MR BB NAYAK for Petitioner No. 1

MR MJ SHAH FOR MR JP SHAH for Respondent No. 1

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CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 12/09/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 At the instance of the revenue, the following question has been referred to this Court for its opinion under the provisions of Section 256(1) of the Income-tax Act,1961 (hereinafter referred to as'the Act').

"Whether, the sum of Rs.10,00,000/- arising as a result of the re-valuation of the assets of the firm was taxable in the hands of the firm u/s.28(iv) of the I.T.Act,1961?"

2 Mr.B.B.Nayak, learned Standing Counsel has appeared for the revenue whereas learned Advocate Mr.M.J.Shah has appeared for the respondent assessee. The facts giving rise to the reference are as under.

3 The respondent assessee is a firm of lawyers which had revalued its assets. Upon revaluation of the assets of the Firm, value of the assets of the firm had appreciated to the tune of Rs.10 lacs. In the course of the assessment proceedings, the assessing officer came to the conclusion that by virtue of the revaluation of the assets, benefit to the tune of Rs.10 lacs had arisen out of the business transaction and therefore the said amount, according to him was taxable under the provisions of Section 28(iv) of the Act.

4 Being aggrieved by the assessment order, the assessee had filed an appeal before the CIT (Appeals). The CIT (Appeals) confirmed the assessment order. Being aggrieved by the order passed by CIT (Appeals), the assessee had filed Second Appeal before the Tribunal. The Tribunal was pleased to set aside the order passed by the assessing officer which was confirmed by the CIT (Appeals) on the ground that by virtue of the said valuation, in fact no income had arisen and therefore it was not open to the revenue to treat the said amount of Rs.10 lacs as the income under section 28(iv) of the Act.

5 Mr.Nayak, learned Standing Counsel appearing for the revenue has submitted that the view expressed by the tribunal is not proper and the action of the assessing officer with regard to taxing the amount of income arising on account of revaluation as income in the hands of assessee firm was just and proper, because by virtue of the revaluation, benefit had arisen to the assessee and its partners to the tune of Rs.10 lacs.

6 On the other hand, Mr.M.J.Shah, for the assessee has submitted that upon reading provisions of Section

28(iv) of the Act, in fact, neither any benefit nor any perquisite had arisen to the assessee or its partners by virtue of the revaluation of the assets and therefore the said amount of Rs.10 lacs cannot be taxed in the hands of the assessee under the provisions of Section 28(iv) of the Act.

7 We have heard the learned Counsel and have also perused the orders passed by the concerned authorities. Upon perusal of the facts of the case, it is very clear that upon revaluation of the assets of the assessee firm, there was an increase in the value of the assets to the tune of Rs.10 lacs in the books of accounts of the assessee, however, in fact, there was no perquisite or benefit, which could have been converted into money or otherwise had arisen from business or from profession to the assessee by virtue of the said revaluation. In the circumstances, in our opinion, the Tribunal was justified in setting aside the assessment order whereby the said amount was added as income of the assessee firm.

8 In our opinion, so as to make the said amount taxable under the provisions of Section 28(iv), revenue must establish that the assessee had earned income or had got any benefit or perquisite which could have been converted into money or otherwise or the said income or perquisite had arisen from the business or upon exercise of the profession. Admittedly, the assessee firm has not earned any income from the revaluation of the assets and therefore, in our opinion, the Tribunal was justified in coming to the conclusion that the said amount of Rs.10 lacs could not have been included in the income of the assessee under Section 28(iv) of the Act.

9 In the circumstances, for the reasons stated hereinabove, we answer the question in the negative i.e. in favour of the assessee and against the revenue.

10 The reference stands answered and disposed of accordingly with no order as to costs.

(A.R.Dave, J) (D.A.Mehta, J)

m.m.bhatt